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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1965

No. 1215

AMERICAN CANYON COUNTY WATER DISTRICT, a County Water District and a public corporation,
Appellant,

vs.

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA,
Appellee.

REPLY TO MOTION TO DISMISS APPEAL

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I. INTRODUCTION.

The following brief reply is filed for the purpose of pointing out to the Court the failure of the Public Utilities Commission of the State of California (hereinafter PUC) in its Motion to Dismiss, to recognize and deal with the issues raised by appellant.

II. APPELLEE PUC DOES NOT MEET APPELLANT'S ARGUMENT AS TO STANDING.

Appellant is a public corporation, initiated by and acting for its electors, and should be afforded all the rights of a private corporation. The holding that corporations are "persons" entitled to protection under the Fourteenth Amendment is based on the rationale that corporations are collectivities which represent and act in the interests of their members or shareholders. *Pierce v. Society of Sisters*, 268 U.S. 510, 69 L.Ed. 1070 (1925); *Joint Anti-fascist Committee v. McGrath*, 341 U.S. 123, 187, 95 L.Ed. 817, 862 (1951). They are created by the initiative of the private persons who are their members and shareholders and continue to exist until those private persons wish to terminate them. The legislation which allows their existence is permissive.

County Water Districts under California law meet all of the criteria set out above. See Jurisdictional Statement, pp. 7-12. They, and all public corporations like them, should be afforded the same protection given private corporations. No basis in logic or policy justifies a difference in treatment between the two types of corporations. The electors of Napa Junction chose to form a County Water District rather than a mutual water company (a private corporation under California law). They should not be penalized for this choice. The rule proposed by the PUC that all political subdivisions may not claim the protection of the Fourteenth Amendment should not be extended to public corporations like appellant, for to do so would be to discriminate irrationally against such entities.

III. APPELLEE PUC'S ARGUMENTS ON DENIAL OF REVIEW BEAR OUT THE CONTENTIONS OF APPELLANT.

Appellant in its Jurisdictional Statement, pp. 18-21, stated that California law may have denied any review of the order in this case. Appellee in its Motion to Dismiss, pp. 5-7, clearly does not refute, but affirms this view of California law. In effect it argues that by failing to petition for rehearing in the two days afforded appellant to do so,* all right to a review on the merits was waived by appellant. But waiver implies voluntary action. Appellant did *not* waive its rights; they were taken away by the Commission's action.

Appellant here respectfully urges that if, as appellee PUC argues, the right to review can be destroyed by action of the Commission in changing an order moments before the effective date, without notice or hearing, thereby effectively depriving a party of the opportunity to petition for rehearing, California law in this respect gives the PUC arbitrary power to deny review, does not afford equal protection of law, and in this case operated to deprive appellant and its electors of property without due process of law.

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*The order of the PUC in Decision No. 68010 was amended by Decision No. 68108 three days before the effective date of the former decision. Appellant learned of this when two days remained. To preserve its right to review, a petition for rehearing was required in those two days. Cal. Public Utilities Code §1731. The time left by the Commission's last-minute action, within which to meet the statutory dead-line for a petition for rehearing, was for practical purposes reduced to naught.

IV. APPELLANT WAS DENIED DUE PROCESS AND EQUAL PROTECTION OF THE LAW.

Appellee PUC states that "a mere conflict in the evidence involves no constitutional question" p. 8, Motion to Dismiss Appeal. Appellant submits that if by this it is meant that any particle of evidence may be enough to justify a result which the overwhelming weight of the evidence opposes, the rule is manifestly absurd and incorrect.

The decision of the PUC in the instant case departs from past standards of the PUC, is predicated on a mistaken view of California law, reveals no reasoned basis for decision, and is contrary to the overwhelming weight of the evidence. The Supreme Court of California did not reach these questions. Appellant and its electors were deprived in arbitrary fashion of the right to operate the water system which serves their area. The electors and other residents will by this decision be subjected to the power of a political subdivision to set rates and institute conditions of service totally free from any check or constraint, aside from the expensive, time-consuming and ineffective right to seek injunction in Superior Court.

Under these circumstances it is submitted a serious and substantial issue of constitutional law is presented, and dismissal is inappropriate.

Respectfully submitted,

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